Howard Willis
2525 County Road 218
Cheyenne WY 82009

UNITED STATES DISTRICT COURT
DISTRICT OF WYOMING

Howard Willis

Plaintiff,

vs.

Nationwide Advantage Mortgage

Defendant

Case # 10-CV-173-D

MORE DEFINITE STATEMENT

Date: Sept. 22, 2010

Comes now Howard Willis , hereinafter referred to as "Petitioner," and moves the court for relief as herein requested:

PARTIES

Petitioner is Howard Willis , 2525 County Road 218 Cheyenne WY 82009. Currently Known Defendant(s) are/is: Nationwide Advantage Mortgage , 1100 Locust St. Dept 2009 , IA 50391, by and through its attorney .

STATEMENT OF FACTS

Plaintiff and seller engaged the services of Benchmark Financial Services, as a mortgage broker, hereinafter referred to as "Broker," to assist Plaintiff and seller in the sale of the property.

Plaintiff was referred to as Draper & Kramer Mortgage Corporation, hereinafter referred to as "Lender," by Broker for the purpose of financing the intended sale of the property.

Lender engaged the services of Brown Appraisal Services LLC, hereinafter referred to as "Appraiser," to prepare an appraisal of the then current value of the property.

Lender engaged the services of Summit Title Services, hereinafter referred to as "Closing Agent," to perform the closing on the sale of the property.

On the 2nd day of February 2008, Plaintiff entered into a contract loan with Lender, said contract is hereinafter referred to as the "note."

On the day of closing on the property, Closing Agent provided the Truth in Lending Statement and Housing and Urban Development Form 1, otherwise known as the "settlement statement."

At closing on the property, Lender assessed fees as listed on the settlement statement.

The fees assessed on the settlement statement were as follows:

801	Loan Origination Fee	$2,420.95
803	Appraisal	$350.00
809	VA Funding Fee	$5,095.50
901	Interest	$1,418.58
903	Hazard Insurance Premium	$1,000.50
1001	Hazard Insurance	$1,062.00
1004	County Property Taxes	$905.55
1101	Settlement fee	$125.00
1105	Document Printing Fee	$25.00
1108	Title Insurance	$483.75
1111	Courier Fees	$25.00
1201	Recording Fee	$76.00
1205	Record Homestead Waiver	$8.00
1303	Foundation Inspection	$250.00

The fees assessed on the settlement statement were added to the principal on the note and interest was charged to Plaintiff on said amounts.

Plaintiff provided to Lender, at the time of the consummation of the note, a document witch established a lien against the property.

Said lien document specifically stated that it was intended to protect Lender from loss if Plaintiff failed to abide by the promises made in the note.

Within days after the consummation of the above referenced note, Lender traded the note to an investor, hereinafter referred to as "Initial Investor," for consideration accepted (identity of Initial Investor, at the time of the filing of this complaint is unknown to Plaintiff, but will be provided subsequent to discovery).

At the sale of the note to Initial Investor, Lender bi-furcated the note and lien by retaining possession of the lien while transferring possession of the note to Initial Investor.

Plaintiff was not noticed of said subsequent sales of the note.

The note was subsequently sold repeatedly to other parties who failed to properly register said sales with the court recorder's office in the county in which the property lies.

After sale of the note, Lender became the servicer of the note, in that Lender contracted with the Initial Investor who was the real party in interest on the note at the time of sale to collect the monthly payments made on the note.

STATEMENT OF FACTUAL ACCUSATION

Plaintiff alleges and is prepared to prove at trial each of the following:

FRAUD BY LENDER

Lender conspired with the Broker, to induce Agent to violate Agent's fiduciary duty to Plaintiff while acting as an agent for Plaintiff in securing funds to purchase a residential property. *(Since all actors in a conspiracy act in pari delicto, and, thereby, are equally culpable*

for the acts of each, Plaintiff did not name Agent, Appraiser, Underwriter, Closing Agent, et, as said actors are not necessary parties. In the interest of judicial economy, Plaintiff only specifically named the party presently claiming agency and standing to enforce the note. If said defendant has reason to believe that others are liable to defendant, defendant is certainly free to cross-complain against said actors in order to lessen the potential claim against defendant.)

Lender, in an act of fraud, represented the property, the current real estate market, the loan product of Lender, and other conditions of the prospective purchase as far more favorable than they actually were at the time said representations were made. Lender knew, or should have known, that said representations were not accurate or were misleading. Lender made said representations to Plaintiff with the intent that Plaintiff make a decision to purchase. Plaintiff did not have equal access to information as Lender as Plaintiff was not a real estate professional. Plaintiff had reason to trust Lender as Lender was licensed to do business. Said license was sufficient to give Plaintiff a reasonable expectation of good faith and fair dealings on the part of Lender. Lender knew, or should have known that if Plaintiff had full disclosure of all the facts Plaintiff would have made a different decision than the decision Plaintiff made. Plaintiff was subsequently harmed by the decision Plaintiff was fraudulently induced to make by Lender.

FAILED TO MAKE CONSPICUOUS DISCLOSURES

Broker, Appraiser, Closing Agent, and Lender failed to make all disclosures to Plaintiff clearly and conspicuously as required by 12 CFR 226.17(a)). The above referenced defendants crafted disclosures in turgid and confusing language, laced with undefined terms of art (legalese) and grouped with many unnecessary and confusing documents for the purpose of rendering the disclosures unintelligible to a reasonable person of ordinary knowledge and understanding of the English language. Lender failed to disclose to Plaintiff that the words and phrases used in the documents put before Plaintiff carried meanings not consistent with those terms as used in normal common speech, but rather were therein used as terms of art, having special legal definitions not made clear to Plaintiff. The above referenced failure defrauded Plaintiff by effecting a lack of full disclosure to Plaintiff which unduly induced Plaintiff to enter into the contract herein referred to as the note.

i. Truth In lending statement not timely

Lender failed to provide a Truth in lending statement at least three days before closing in violation of 12 CFR 226.31(c)(1). Plaintiff alleges that the failure on the part of Lender to provide the required disclosure was an act in concert with other acts perpetrated here intended to mislead and defraud Plaintiff. Plaintiff understands the statutory limitations on the court concerning the

assessment of civil penalties under the Truth in Lending Act. Plaintiff is not so concerned with the acts of Lender as they relate to the imposition of said penalties, but rather, as they relate to a pattern of lack of intentional non-disclosure intended to defraud Plaintiff.

ii. Terms for the note changed at closing

The terms for the note were changed at closing without prior notice to Plaintiff in violation of 21 CFR 226 (c)(1)(i). When Plaintiff objected to the trustee at closing, Plaintiff was told to either take it or leave it. This was a deliberate act on the part of Lender to induce Plaintiff to so arrange Plaintiff's affairs so that the purchase of the property became a personal and financial necessity, thereby, placing improper undue pressure on Plaintiff in order to force Plaintiff to accept conditions Plaintiff would never have agreed to absent the fraudulent failure to timely disclose said changes.

iii. Disclosures did not reflect terms

The disclosures to provided Plaintiff by Lender did not accurately reflect the closing amounts and did not clearly state that the disclosures were estimates in violation of 12 CFR 226.31(d)(1). Lender, in making verbal and written disclosures to Plaintiff, gave partial disclosure, but failed to give full disclosure in that Lender failed to disclose that the disclosures were only estimates. It is the further allegation of Plaintiff that said disclosures were deliberately misconstrued in a pattern of conduct engaged in by the broker, appraiser, underwriter, trustee, and lender for the purpose of inducing an unsophisticated consumer to enter into a predatory loan product on which Lender intended to foreclose.

iv. Per Diem interest not accurately disclosed

Lender failed to provide documentation to show that the calculation of the per diem interest was true and accurate in violation of 12 CFR 226.3(a)(ii).

IMPROPERLY CHARGED FEES

Lender, at closing, charged fees to Plaintiff that were totally false in some instances and intended to be included in the finance charge in other instances.

i. False Fees

Lender charged fees to Plaintiff for services never provided and that Lender added said false fees to the principal of the note with the intention, not only of collection the fees improperly, but also, in as much as any extra fee added to the principal at closing will effectively be the last amount paid, Lender intended to collect interest on said fees for the full term of the note. It is a common practice of lenders to add what is called "junk" fees to the Housing and

Urban Development Form 1 document hereinafter referred to as "settlement statement." *(see attachment labeled Exhibit B)* Plaintiff, subsequent to the discovery of documentation from Lender, Plaintiff will prove that certain of the fees assessed on the settlement statement lack documentation as they were never performed or paid for by Lender and, therefore, the assessment of said fees were acts of fraud against Plaintiff.

ii. Fees not allowed to be assessed on settlement statement

Lender assessed fees to Plaintiff at closing as listed on the settlement statement. As indicated above, certain of these fees were intended to be part of the finance charge and were intended to be paid from the interest charged to Plaintiff. Instead of absorbing said costs as the normal part of doing business, Lender improperly assessed said charges to Plaintiff, added said charges to the original principal, and intended to charge plaintiff interest on said charges for the full term of the note.

Plaintiff was induced to accept the fees a genuine and proper because of the licensed status of the closing agent. Plaintiff, by virtue of said licensed status, had cause to hold a reasonable expectation of good faith and fair dealings from Defendant agent, Lender, and closing agent.

The amount of overpayment on the note Lender intended Plaintiff pay over the term of the note would be in the amount of $145,608.75.

Said improper charges include, but are not limited to charges by third parties which are not otherwise excluded under 12 CFR 226.4(a)(1)(i)). Lender required the use of said third parties as a condition of or an incident to the extension of credit which included, but is not limited to charges for appraisers, inspectors, underwriters, and others to be determined subsequent to discovery. Said fees, as demonstrated above, were forbidden to be charged to Plaintiff. While the civil penalty for said violations of the Truth in Lending Act appears to have ran, and even if the court discounts equitable tolling of the statute of limitations for the imposition of said penalties, the charges to Plaintiff that were added to the principal which Plaintiff was intended to pay and which improperly increased the cost to lender as indicated above, amount to a criminal fraud against Plaintiff. Regardless of the covenants of the contract, the above referenced false fees ring in tort against Lender.

CONSPIRACY TO FALSE FEES

It is the further allegation of Plaintiff that Lender charged false fees at closing which were added to the original principal on which interest was charged. It was intended that above referenced costs be considered the normal part of doing business and be absorbed in the finance

charge. Instead, Lender added said fees to the head of the note, then used said fees to bribe Broker to up sell *(convince the buyer to accept an artificially high priced loan product)* the note to Plaintiff, thereby, charging Plaintiff for the bribes Lender used to defraud Plaintiff. Instead of absorbing said fees in the finance charge, Lender intended to charge interest on said fees for the full term of the note. Plaintiff was harmed by said act by being charged extra fees, thereby, increasing the cost of the note.

CONSPIRACY BETWEEN LENDER AND APPRAISER

Lender conspired with Appraiser to present an inaccurate appraisal and false representation of the true value of the Property, in order to induce Plaintiff into entering into a predatory loan with Lender. Appraiser's inaccurate appraisal defrauded Plaintiff by giving Plaintiff the false impression that the property was more valuable than it actually was. Lender knew, or should have known, that Plaintiff did not have equal access to information concerning the value of the property as Lender would not allow Plaintiff to provide a neutral appraisal of the property. Lender knew, or should have known, that Plaintiff would have made a different decision if Plaintiff were given a true and accurate appraisal of the property.

APPRAISER

Defendant(s), specifically demanded that the appraiser of their choice be used. Said appraiser, because of mechanizations of the mortgage industry, works at the pleasure of the mortgage and the borrower is not allowed to use an outside appraiser. This requirement of the use of appraisers who work exclusively at the behest of the Lender creates a situation that an reasonable person of ordinary prudence would expect to unduly influence the appraiser to produce appraisals which served the Lender's best interest. In the instant cause, the appraiser improperly appraised the property in order to unduly influence Plaintiff to believe the loan was equitable.

UNDISCLOSED CLOSING AGENT RELATIONSHIP

Defendant(s) added closing agent charges to the principal of the note, for services required by the Lender and made by third party vendors who conducted the loan closing (12 CFR 226.4(a)(2)(i)).

Closing agent was selected by Lender. Plaintiff was not adequately advised that Plaintiff could select a closing agent of Plaintiff's choice. Consequent to the above referenced failure to give clear and conspicuous disclosures, Plaintiff was induced into accepting the closing agent as a neutral and trustworthy professional.

By failing to fully disclose the ongoing financial relationship between the closing agent and the Lender, Lender defrauded Plaintiff by non-disclosure.

CONSPIRACY BETWEEN LENDER AND UNDERWRITER

Lender further conspired with Underwriter in order to mislead Plaintiff by an improper approval of a mortgage agreement that failed to meet the requirements of the Real Estate Settlement Procedures Act, Truth in Lending Act, and various and sundry local, state, and federal consumer protection laws. Said violations as stipulated above, included the assessment of false fees at closing. The underwriter, acting as the alter ego of Lender, under the guise of checking the note for propriety and correctness, unduly influenced Plaintiff into accepting all the fees charged at closing as true, valid, and accurate. The underwriter, acting as the alter ego of Lender, acted with culpable knowledge of the impropriety of the false fees charged to Plaintiff, or the underwriter acted with gross negligence. The underwriter, acting as the alter ego of Lender, defrauded Plaintiff by failing to disclose to Plaintiff that the fees charged to Plaintiff were improper and in violation of standing law. Lender knew, or should have known, that Plaintiff would have made a different decision had underwriter done a proper job of checking the legality and propriety of the note. Plaintiff was harmed by the negligence or fraud of underwriter.

CLOSING AGENT ALLOWED FALSE FEES

Closing Agent, acting as trustee, failed to notify Plaintiff that many, if not all fees charged to Plaintiff were either totally false, unauthorized to be charged, or included undisclosed markups on amounts charged by third party vendors. Closing Agent, acting as trustee, allowed insufficient time for Plaintiff to read and understand the large stack of documents put before Plaintiff at closing. Closing Agent, acting as trustee, took unfair advantage of the trust engendered in Plaintiff by Closing Agent's position as trustee and failed to give Plaintiff full disclosure if the improper nature of the fees charged at closing in violation of 12 CFR 226.4(a)(1)(ii)).

NOTICES WITHHELD TO DEFRAUD PLAINTIFF

Lender, at and before settlement, failed to provide statutorily mandated notices to borrower, by failing to provide each of the specific notifications listed herein, to include but not limited to:

No HUD 1 Booklet provided within three days after the loan application was made to the Lender;

Good Faith Estimate not timely provided;

Good Faith Estimate not accurate within specified limits;

No holder rule warning in note;

Right to rescind not clearly made;

Principal and interest on note not clearly highlighted or readily visible;

Failed to include the FTC Holder Warning (16 CFR 433) in the note document.

UNDISCLOSED MARKUP

Lender, at closing, while acting in concert and collusion with Underwriter andn Closing Agent, assessed undisclosed markups to Plaintiff over the amounts charged by vendors who performed services connected with the loan closing and added said undisclosed markups to the principal on which the above referenced defendants intended that Plaintiff pay interest for the term of the note (12 CFR 226.4(a)(2(ii)).

BROKER FEE IMPROPERLY ADDED TO PRINCIPAL

Lender, acting in concert and collusion with Underwriter and Closing Agent, assessed a broker fee to Plaintiff at closing in the amount of $2420.95, and added said amount to the principal of the note for which Defendant(s) intended to charge Plaintiff interest for the full term of the note(see Special Rule 12 CFR 226.4(a)(3)).

CONSPIRACY BETWEEN CLOSING AGENT AND LENDER

Closing Agent conspired with Lender to create a condition at closing intended to deny Plaintiff full disclosure by contriving to pressure Plaintiff into signing a multitude of documents in a short and pressured time frame in order to prevent Plaintiff from having time to fully understand the alleged disclosures and stipulations Plaintiff was induced to sign.

Closing Agent failed to insure that all documents were properly prepared and in compliance with all relevant consumer protection laws.

Closing Agent intentionally pressured Plaintiff to read and attempt to understand a stack of mostly irrelevant documents for the express purpose of rendering Plaintiff susceptible to undue pressure to enter into a predatory loan product to the detriment of Plaintiff.

UNSUPPORTED CLAIM OF AGENCY BY LENDER

The identity of the current holder (otherwise known as the real party in interest) of the promissory note alleged to have been created by Plaintiff is unknown to Plaintiff. In a hearing

held by telephone, Wells Fargo admitted to the court that the note had been securitized. Securitization means that the original lender sold or otherwise transferred ownership of the not to another party. The common practice in the industry concerning the securitization of notes involves a numerous transfers or assignments of the note from one party to another. In as much as Wells Fargo has stipulated to the securitization of the note, it is incumbent upon Wells Fargo, before they deprive Plaintiff of Plaintiff's property that Wells Fargo prove that it is the current holder of the note and the deed of trust.

By plaintiff's original complaint challenged standing of Wells Fargo and demands that Wells Fargo prove up its standing to enforce the deed of trust through a showing that Wells Fargo is a valid holder of both the deed of trust and the note.

Subsequent to Lender's failure to identify the real party in interest as contemplated by Uniform Commercial Code 3-501, Lender is statutorily estopped from pursuing collection on the promissory note alleged to have been created by Plaintiff as Plaintiff is authorized to cease all payments without dishonor until such time as Lender complies with all tenants of the alleged promissory note and all applicable law.

Lender entered into a sales contract with an as yet unknown party for the sale of the promissory note alleged to have been created by Plaintiff yet failed to publicly record said sale with the clerk of the court.

Lender, in the capacity of the current servicer of the alleged promissory note, claims agency to act in the place of the real party in interest on the above referenced security instrument.

Plaintiff, at closing, was given a photocopy of the original note signed by Plaintiff.

Plaintiff, at the time of closing, bolstered by the state of false trust in the "trustee" and others, was not noticed or aware that Lender could have produced multiple originals of the promissory note document.

Lender took the original promissory note out of sight of Plaintiff and allegedly made a true and accurate copy and provided said copy to Plaintiff.

With the current state of technology, there is no way for Plaintiff to tell if the copy provided to Plaintiff by Trustee was a true and correct copy of the promissory note allegedly signed by Plaintiff.

Lender then retained the only original of the promissory note signed by Plaintiff.

Lender, upon request of Plaintiff, has failed to produce the original promissory note signed by Plaintiff for examination.

The failure of Lender to produce, for inspection, as contemplated by Uniform Commercial Code 3-501, an original promissory note creates the adverse inference that no such note is in the possession of Lender

Lender, or current servicer, has failed to prove that Lender is a true agent of the principal holder of the above referenced security instrument.

Plaintiff has reason to believe and does believe that the security instrument does not exist and was deliberately destroyed by an agent of the real party in interest.

To the knowledge of Plaintiff, there exists only photo copies of the original security instrument that could have been easily altered to favor Lender with covenants not present in the original signed by Plaintiff.

SECURITIZATION PRACTICES VOID CONTRACT

The original note contained a provision for modification of the original loan agreement.

The modification provision of the note has been rendered unenforceable as there is no one known to Plaintiff who has authority to authorize a modification of the original contract.

By secretly selling the note as a security instrument, Defendant(s) have nullified a provision of the contract which authorizes modification of the note.

Plaintiff, having reason to believe that fraud was involved in the creation of the loan instruments, has a claim against the real party in interest, and thereby, has need to know all parties who have received enrichment from the proceeds of said security instrument.

In as much as, in the case of a security instrument created from a note which is the result of a consumer transaction, there can be no holder in due course and, according to the Federal Trade Commission Holder Rule, 16 CFR 433, and 12 CFR 226 (Regulation Z), the holder of the such security instrument stands in the shoes of the Lender and is subject to any claim Plaintiff would have on the Lender, Plaintiff has a right to know the identity of any person or entity currently claiming, or who has ever claimed real party interest in said security instrument.

NOTE POOLED AND LOST

At a point in time unknown to Plaintiff, either prior to or subsequent to the close of escrow on their respective loans, Defendants did place or caused to be placed the original promissory note executed by Plaintiff into a pool with multiple other such notes.

Said pooled notes were sold to one or more investors through securitized transactions without Plaintiff's knowledge or consent and to Plaintiff's detriment.

The above sale transactions were not filed in the public record of the clerk of the county.

The above referenced pooled notes were repeatedly resold to numerous other investors.

AGENT LACKS AGENCY

It is the belief and specific allegation of Plaintiff that the alleged agent for the lender is not the agent for the lender, but rather, is an unauthorized intervener who merely claims agency for the purpose of defrauding Plaintiff of Plaintiff's property. It is the further belief and allegation of Plaintiff that the alleged agent for the lender has no contract to with the real party in interest on the note and, therefore, has no agency to represent said real party in interest.

REAL PARTY IN INTEREST UNKNOWN AND UN-PROVABLE

The above referenced security instrument was filed with Mortgage Electronic Registration Services (hereinafter referred to as "MERS"); a company purportedly established for the purpose of registering mortgage as a security instrument. Plaintiff alleges that MERS scanned the original security instrument into their electronic system, and then destroyed the original security instrument.

The pooled notes that included Plaintiff's original contract became lost, either as a result of deliberate intent or the misconduct of the investors to whom they were sold. It has become impracticable to the point of being impossible to trace the location, the possessor, or the actual holders(s) of the original promissory note.

ASSIGNMENT OF NOTE IS FRAUD

Plaintiff alleges and is prepare to prove at trial that the alleged assignment of standing to enforce the note to Current Servicer is a fraud on the court as said instrument fails to identify the real party in interest and does not contain evidence, affirmed and verified by the current principal on the note granting agency to Current Servicer.

It is the assertion and allegation of Plaintiff that the alleged assignment presented by Current Servicer, was not made by the real party in interest, but rather, by an employee of the servicer bank, or some other person specifically designated to impersonate the real party in interest. Therefore, it is the allegation of Plaintiff that the Current Servicer lack legal standing to enforce the note and, therefore, are unable to invoke the subject matter jurisdiction of the court.

RESPA PENALTIES

From a cursory examination of the records, with the few available, the apparent RESPA violations are as follows:

Good Faith Estimate not within limits

No HUD-1 Booklet

Truth In Lending Statement not within limits compared to Note

Truth in Lending Statement not timely presented

HUD-1 not presented at least one day before closing

No Holder Rule Notice in Note

No 1st Payment Letter

No signed and dated :

Financial Privacy Act Disclosure;

Equal Credit Reporting Act Disclosure;

notice of right to receive appraisal report;

servicing disclosure statement;

borrower's Certification of Authorization;

notice of credit score;

RESPA servicing disclosure letter;

loan discount fee disclosure;

business insurance company arrangement disclosure;

notice of right to rescind.

The courts have held that the borrower does not have to show harm to claim a violation of the Real Estate Settlement Procedures Act, as the Act was intended to insure strict

compliance. And, in as much as the courts are directed to assess a penalty of no less than two hundred dollars and no more than two thousand, considering the large number enumerated here, it is reasonable to consider that the court will assess the maximum amount for each violation.

Since the courts have held that the penalty for a violation of RESPA accrues at consummation of the note, borrower has calculated that, the number of violations found in a cursory examination of the note, if deducted from the principal, would result in an overpayment on the part of the borrower, over the life of the note, of $215,712.75.

If the violation penalty amounts for each of the unsupported fees listed above are included, the amount by which the borrower would be defrauded is $247,498.79

ADDING IN RESPA PENALTIES FOR ALL THE UNSUPPORTED SETTLEMENT FEES ALONG WITH THE TILA/NOTE VARIANCE, IT APPEARS THAT LENDER INTENDED TO DEFRAUD BORROWER IN THE AMOUNT OF $609,273.66 LIEN IS VOID

Lender sold the security instrument immediately after closing and received consideration in an amount in excess of the lien held by Lender. Since Lender retained the lien document upon the sale of the security instrument, Lender separated the lien from said security instrument, creating a fatal and irreparable flaw.

When Lender received consideration while still holding the lien and said consideration was in excess of the amount of the lien, Lender was in a position such that he could not be harmed and could not gain standing to enforce the lien. The lien was, thereby, rendered void.

Since the separation of the lien from the security instrument creates such a considerable concern, said separation certainly begs a question: "Why would the Lender retain the lien when selling the security instrument?"

When you follow the money the answer is clear. The Lender will hold the lien for three years, then file and IRS Form 1099a and claim the full amount of the lien as abandoned funds and deduct the full amount from Lender's tax liability, thereby, receiving consideration a second time.

Later, in the expected eventuality of default by Plaintiff, Lender then claimed to transfer the lien to the holder of the security, however, the lien once satisfied, does not gain authority just because the holder, after receiving consideration

LENDER PROFIT BY CREDIT FAULT SWAP DERIVATIVES

Lender, as motivation for the above referenced fraud, further stood to profit by credit fault swaps in the derivatives market, by way of inside information that Lender had as a result of creating the faulty loans sure to default. Lender was then free to invest on the bet that said loan would default and stood to receive unjust enrichment a third time. This credit default swap derivative market scheme is almost totally responsible for the stock market disaster we now experience as it was responsible for the stock market crash in 1907.

TILA AND RESPA SUBJECT TO EQUITABLE TOLLING

The Limitations Period for Plaintiffs' Damages Claims under TILA and RESPA should be Equitably Tolled due to the DEFENDANTS' Misrepresentations and Failure to Disclose.

Defendants Homecomings is correct to assert that claims for statutory and other money damages under the Truth in Lending Act *(15 U.S.C. § 1601,* et. seq.) and under the Real Estate Settlement Procedures Act *(12 U.S.C. § 2601* et. seq.) the time a claimant has to raise a claim under RESPA is two years or until full disclosure. The above allegations of fraud by non-disclosure toll the limitations. Further, such claims are subject to the equitable tolling doctrine. The Ninth Circuit has interpreted the TILA limitations period in § 1640(e) as subject to equitable tolling. In *King v. California, 784 F.2d 910 (9th Cir.1986),* the court held that given the remedial purpose of TILA, the limitations period should run from the date of consummation of the transaction, but that "the doctrine of equitable tolling may, in appropriate circumstances, suspend the limitations period until the borrower discovers or has reasonable opportunity to discover the fraud or nondisclosures that form the basis of the TILA action." *King v. California, 784 F.2d 910, 915 9th* Cir. 1986).

Likewise, while the Ninth Circuit has not taken up the question whether *12 U.S.C. § 2614,* the anti-kickback provision of **RESPA,** is subject to equitable tolling, other Courts have held that such limitations period may be equitably tolled. The Court of Appeals for the District of Columbia held that § 2614 imposes a strictly jurisdictional limitation, *Hardin v. City Title & Escrow Co., 797 F.2d 1037, 1039-40 (D.C. Cir. 1986),* while the Seventh Circuit came to the opposite conclusion. *Lawyers Title Ins. Corp. v. Dearborn Title Corp., 118 F.3d 1157, 1164 (7th Cir. 1997).* District courts have largely come down on the side of the Seventh Circuit in holding that the one-year limitations period in § 2614 is subject to equitable tolling. See, e.g., *Kerby v. Mortgage Funding Corp., 992 F.Supp. 787, 791-98 (D.Md.1998); Moll v. U.S. Life Title Ins. Co., 700 F.Supp. 1284, 1286-89 (S.D.N.Y.1988).* Importantly, the Ninth Circuit, as noted above, has

interpreted the TILA limitations period in *15 U.S.C. § 1640* as subject to equitable tolling; the language of the two provisions is nearly identical. *King v. California, 784 F.2d at 914.* While not of precedential value, this Court has previously found both the TILA and **RESPA** limitations periods to be subject to equitable tolling. *Blaylock v. First American Title Ins. Co., 504 F.Supp.2d 1091,* (W.D. Wash. 2007). 1106-07.

The Ninth Circuit has explained that the doctrine of equitable tolling "focuses on excusable delay by the Plaintiff," and inquires whether "a reasonable Plaintiff would ... have known of the existence of a possible claim within the limitations period." *Johnson v. Henderson, 314 F.3d 409, 414 (9th Cir.2002), Santa Maria v. Pacific Bell, 202 F.3d 1170, 1178 (9th Cir.2000).* Equitable tolling focuses on the reasonableness of the Plaintiff's delay and does not depend on any wrongful conduct by the Defendants. Santa Maria. at 1178.

CLAIM TO QUIET TITLE.

Plaintiff properly averred a claim to quiet title. Plaintiff included both the street address, and the Assessor's Parcel Number for the property. Plaintiff has set forth facts concerning the title interests of the subject property. Moreover, as shown above, Plaintiff's claims for rescission and fraud are meritorious. As such, Plaintiff's bases for quiet title are meritorious as well.

Defendants' claims are without any right, and Defendants have no title, estate, lien, or interest in the Subject Property in that purported power of sale contained in the Deed of Trust is of no force or effect because Defendants' security interest in the Subject Property has been rendered void and that the Defendants are not the holder in due course of the Promissory Note.. Moreover, because Plaintiff properly pled all Defendants' involvement in a the fraudulent scheme, all Defendants are liable for the acts of its co-conspirators,

"a Plaintiff is entitled to damages from those Defendants who concur in the tortious scheme with knowledge of its unlawful purpose." *Wyatt v. Union Mortgage Co., 24 Cal. 3d 773, 157 Cal. Rptr. 392, 598 P.2d 45 (1979); Novartis Vaccines and Diagnostics, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc., 143 Cal. App. 4th 1284, 50 Cal. Rptr. 3d 27 (1st Dist. 2006); Kidron v. Movie Acquisition Corp., 40 Cal. App. 4th 1571, 47 Cal. Rptr. 2d 752 (2d Dist. 1995).*

CAUSES OF ACTION

BREACH OF GOOD FAITH AND FAIR DEALINGS

Plaintiff, being an unsophisticated purchaser and being aware that there existed a number of consumer protection laws in place to protect consumers from unscrupulous and underhanded tactics by licensed professionals, was deceived into believing Plaintiff could trust said licensed

professionals to provide good faith and fair dealings with Plaintiff. *Slover v. State Board of Clinical Social Workers, 144 Or.App. 565, 572, 927 P.2d 1098 (1996).*

FRAUD BY NON-DISCLOSURE BY LENDER

Lender, in acts of fraud by non-disclosure, advised Plaintiff of some of the costs associated with the loan while failing to give full disclosure. Lender assured Plaintiff that the loan product would be far less costly than defendants knew or should have known said loan product would turn out to be. Lender failed to provide full disclosure of the true nature of all the costs to Plaintiff. Lender knew that Plaintiff did not have equal access to information as Lender. Lender took unfair advantage of Plaintiff's expectation of good faith and fair dealings created by Lender's special status as a company doing business under a license.

Plaintiff, acting in good faith reliance on representations made by Lender, made the decision to purchase the Property. Plaintiff was harmed as a result of the failure on the part of Lender to give full disclosure.

BREACH OF FIDUCIARY DUTY

It is the specific allegation of Plaintiff that, Broker conspired with Lender to receive commissions in excess of the 1% maximum allowed by the Real Estate Settlement Procedures Act. In order to help insure that Broker, while acting as agent for Plaintiff, would act in good faith toward Plaintiff and seek out the best loan product for Plaintiff. Lender, acting in direct violation of Regulation Z, extended a loan origination fee to Broker in excess of the 1% allowed by law. Broker, subsequently, in an act of "breach of fiduciary duty," represented the note to plaintiff as the best loan available to Plaintiff.

BREACH OF FIDUCIARY DUTY

Plaintiff hereby incorporates by reference, re-pleads and re-alleges each and every allegation contained in all of the paragraphs of the General Allegations and Facts Common to All Causes of Action as though the same were set forth herein.

Defendants Agent, appraiser, trustee, Lender, et al, and each of them, owed Plaintiff a fiduciary duty of care with respect to the mortgage loan transactions and related title activities involving the Trust Property.

Defendants breached their duties to Plaintiff by, *inter alia,* the conduct described above. Such breaches included, but were not limited to, ensuring their own and Plaintiffs' compliance

with all applicable laws governing the loan transactions in which they were involved, including but not limited to, TILA, HOEPA, **RESPA** and the Regulations X and Z promulgated there under.

Defendants' breaches of said duties was a direct and proximate cause of economic and non-economic harm and detriment to Plaintiffs.

Plaintiff did, in fact, suffer economic and non-economic harm and detriment as a result of such conduct, all to be shown according to proof at trial of this matter.

CAUSE OF ACTION - NEGLIGENCE/NEGLIGENCE PER SE

Plaintiff hereby incorporates by reference, re-pleads and re-alleges each and every allegation contained in all of the paragraphs of the General Allegations and Facts Common to All Causes of Action as though the same were set forth herein.

Defendants owed a general duty of care with respect to Plaintiffs, particularly concerning their duty to properly perform due diligence as to the loans and related transactional issues described hereinabove.

In addition, Defendants owed a duty of care under TILA, HOEPA, **RESPA** and the Regulations X and Z promulgated there under to, among other things, provide proper disclosures concerning the terms and conditions of the loans they marketed, to refrain from marketing loans they knew or should have known that borrowers could not afford or maintain, and to avoid paying undue compensation such as "yield spread premiums" to mortgage Agents and loan officers.

Defendants knew or in the exercise of reasonable care should have known, that the loan transactions involving Plaintiff and other persons similarly situated were defective, unlawful, violative of federal and state laws and regulations, and would subject Plaintiff to economic and non-economic harm and other detriment.

Plaintiff is among the class of persons that TILA, HOEPA, **RESPA** and the Regulations X and Z promulgated there under were intended and designed to protect, and the conduct alleged against Defendants FIDELITY, CITIGROUP, and HOMEQ, and each of them is the type of conduct and harm which the referenced statutes and regulations was designed to deter.

As a direct and proximate result of Defendant's negligence, Plaintiff suffered economic and non-economic harm in an amount to be shown according to proof at trial.

COMMON LAW FRAUD

Plaintiff hereby incorporates by reference, re-pleads and re-alleges each and every allegation contained in all of the paragraphs of the General Allegations and Facts Common to All Causes of Action as though the same were set forth herein.

If any Defendants misrepresentations made herein were not intentional, said misrepresentations were negligent. When the Defendants made the representations alleged herein, he/she/it had no reasonable ground for believing them to be true.

Defendants made these representations with the intention of inducing Plaintiff to act in reliance on these representations in the manner hereafter alleged, or with the expectation that Plaintiff would so act.

Plaintiff is informed and believes that Defendant et al, facilitated, aided and abetted various Defendants in their negligent misrepresentation, and that various Defendants was negligent in not implementing procedures such as underwriting standards oversight that would have prevented various Defendants from facilitating the irresponsible and wrongful misrepresentations of various Defendants to Defendants .

Plaintiff is informed and believes that Defendant acted in concert along with other others named herein in promulgating false representations to cause Plaintiff to enter into the LOAN without knowledge or understanding of the terms thereof.

As a proximate result of the negligent misrepresentations of Defendants as herein alleged, the Plaintiff sustained damages, including monetary loss, emotional distress, loss of credit, loss of opportunities, attorney fees and costs, and other damages to be determined at trial. As a proximate result of Defendants' breach of duty and all other actions as alleged herein, Defendants has suffered severe emotional distress, mental anguish, harm, humiliation, embarrassment, and mental and physical pain and anguish, all to Plaintiff's damage in an amount to be established at trial;

FRAUD BY NON-DISCLOSURE

Plaintiff hereby incorporates by reference, re-pleads and re-alleges each and every allegation contained in all of the paragraphs of the General Allegations and Facts Common to All Causes of Action as though the same were set forth herein.

Claimant made representation to Plaintiff that Claimant had authority to exercise foreclosure on the deed of trust and mortgage note agreement entered into between Claimant and Plaintiff.

Claimant not the real party in interest of the mortgage note upon authority of which Defendants claimed authority.

Defendant had a duty to reveal to Plaintiff that Claimant was not the real party in interest of the security interest that would give Claimant standing to foreclose on the property at issue.

The fact that Claimant was not the real party in interest of the mortgage note was material to standing of Defendants to exercise the authority Defendants claimed.

Plaintiff was ignorant of the fact that Claimant was not the real party in interest of the necessary security interest, neither did Plaintiff have equal opportunity to discover the fact of the sale of the security interest by Claimant.

Claimant was deliberately silent when they had a duty to speak.

By failing to disclose the above referenced facts, Claimant intended that Plaintiff should rely on Claimant claimed authority to sell the personal property of Plaintiff and force Plaintiff to vacate Plaintiff's primary place of residence.

Plaintiff relied on Claimant's nondisclosure and was injured as a result of acting without the knowledge of the undisclosed facts.

FOR BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING.

Plaintiff hereby incorporates by reference, re-pleads and re-alleges each and every allegation contained in all of the paragraphs of the General Allegations and Facts Common to All Causes of Action as though the same were set forth herein.

Plaintiff properly pled Defendant(s) violated the breach of implied covenant of good faith and fair dealing. "Every contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement." *Price v. Wells Fargo Bank, 213 Cal.App.3d 465, 478, 261 Cal. Rptr. 735 (1989);* Rest.2d Contracts § 205. A mortgage Agent has fiduciary duties. *Wyatt v. Union Mortgage Co., (1979) 24 Cal. 3d. 773.* Further, In *Jonathan Neil & Associates, Inc. v Jones, (2004) 33 Cal. 4th 917,* the court stated:

In the area of insurance contracts the covenant of good faith and fair dealing has taken on a particular significance, in part because of the special relationship between the insurer and the insured. The insurer, when determining whether to settle a claim, must give at least as much consideration to the welfare of its insured as it gives to its own interests. . . The standard is premised on the insurer's obligation to protect the insured's interests . . . *Id. at 937.*

Likewise, there is a special relationship between an agent and borrower. "A person who provides services to a borrower in a covered loan transaction by soliciting Lenders or otherwise negotiating a consumer loan secured by real property, is the fiduciary of the consumer...this fiduciary duty [is owed] to the consumer regardless of whom else the agent may be acting as an agent for . . . The fiduciary duty of the agent is to deal with the consumer in *good faith.* If the *Agent knew or should have known that the Borrower will or has a likelihood of defaulting ... they have a fiduciary duty to the borrower not* to place them in that loan." (California Department of Real Estate, *Section 8: Fiduciary Responsibility,* www.dre.ca.gov). [*Emphasis Added*].

All Defendant(s), willfully breached their implied covenant of good faith and fair dealing with Plaintiff when Defendant(s): (1) Failed to provide all of the proper disclosures; (2) Failed to provide accurate Right to Cancel Notices; (3) Placed Plaintiff into the current loan product without regard for other more affordable products; (4) Placed Plaintiff into a loan without following proper underwriting standards; (5) Failed to disclose to Plaintiff that Plaintiff was going to default because of the loan being unaffordable; (6) Failed to perform valid and /or properly documented substitutions and assignments so that Plaintiff could ascertain her rights and duties; and (7) Failed to respond in good faith to Plaintiff's request for documentation of the servicing of her loan and the existence and content of relevant documents. Therefore, due to the special relationship inherent in a real estate transaction between Agent and borrower, *and* all Defendant(s) participation in the conspiracy.

CAUSE OF ACTION VIOLATION OF TRUTH IN LENDING ACT 15 U.S.C. §1601 ET SEQ

Plaintiff hereby incorporates by reference, re-pleads and re-alleges each and every allegation contained in all of the paragraphs of the General Allegations and Facts Common to All Causes of Action as though the same were set forth herein.

This consumer credit transaction was subject to the Plaintiff's right of rescission as described by *15 U.S.C. § 1635*(a) and Regulation Z § 226.23 (12 C.F.R. § 226.23).

More particularly, the same Defendants violated *15 U.S.C. § 1635*(a) and Regulation Z § 226.23(b) with regards to the purported Notice of Right to Cancel. As a consequence of this action, the Notice of Right to Cancel documentation was not provided to Plaintiff or if furnished, to Plaintiff it failed to: Correctly identify the transaction; Clearly and conspicuously disclose the Plaintiff's right to rescind the transaction three days after delivery of all required disclosures; Clearly and conspicuously disclose how to

exercise the right to rescind the transaction, with a form for that purpose; Clearly and conspicuously disclose the effects of rescission; Clearly and conspicuously disclose the date the rescission period expired.

Furthermore, Plaintiff is informed and believes that Defendants violated TILA at the time of origination because, among other things: Multiple GFE's used to mislead and confuse borrower about actual terms of Notes;

Plaintiff is informed and believes that Defendants's violation of the provisions of law rendered the credit transaction null and void, invalidates Defendants's claimed interest in the Subject Property, and entitles Plaintiff to damages as proven at trial.

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

The conduct committed by Defendants, driven as it was by profit at the expense of increasingly highly leveraged and vulnerable consumers who placed their faith and trust in the superior knowledge and position of Defendants, was extreme and outrageous and not to be tolerated by civilized society.

Defendants either knew that their conduct would cause Plaintiff to suffer severe emotional distress, or acted in conscious and/or reckless disregard of the probability that such distress would occur.

Plaintiff did in fact suffer severe emotional distress as an actual and proximate result of the conduct of Defendants as described hereinabove.

As a result of such severe emotional distress, Plaintiff suffered economic and non economic harm and detriment, all to be shown according to proof at trial of this matter.

Plaintiff demands that Defendants provide Plaintiff with release of lien on the lien signed by Plaintiff and secure to Plaintiff quite title;

Plaintiff demands Defendants disgorge themselves of all enrichment received from Plaintiff as payments to Defendants based on the fraudulently secured promissory note in an amount to be calculated by Defendants and verified to Plaintiff;

Plaintiff further demands that Defendants pay to Plaintiff an amount equal to the amount Defendants intended to defraud Plaintiff of which amount Plaintiff calculated to be equal to $742,496.37;

SUFFICIENCY OF PLEADING

Plaintiff has sufficiently pled that relief can be granted on each and every one of the Complaint's causes of action. Federal Rule of Civ. Procedure 12(b)(6) provides for dismissal if a Plaintiff fails to state a claim upon which relief can be granted. A complaint should not be dismissed "unless it appears beyond doubt that the Plaintiff can prove no set of facts in support of her claim which would entitle her to relief." *Housley v. U.S. (9th Cir. Nev. 1994) 35 F.3d 400, 401.* "All allegations of material fact in the complaint are taken as true and construed in the light most favorable to Plaintiff." *Argabright v. United States, 35 F.3d 1476, 1479 (9th Cir. 1996).*

Attendant, the Complaint includes a "short, plain statement, of the basis for relief." Fed. Rule Civ. Proc. 8(a). The Complaint contains cognizable legal theories, sufficient facts to support cognizable legal theories, and seeks remedies to which Plaintiff is entitled. *Balistreri v. Pacifica Police Dept., 901 F.2d 696, 699 (9th Cir. 1988); King v. California, 784 F.2d 910, 913 (9th Cir. 1986).* Moreover, the legal conclusions in the Complaint can and should be drawn from the facts alleged, and, in turn, the court should accept them as such. *Clegg v. Cult Awareness Network, 18 F.3d 752* (9th Cir, 1994). Lastly, Plaintiff's complaint contains claims and has a probable validity of proving a "set of facts" in support of their claim entitling them to relief. *Housley v. U.S. (9th Cir. Nev. 1994) 35 F.3d 400, 401.* Therefore, relief as requested herein should be granted.

PRAYER

WHEREFORE, Petitioner prays for judgment against the named Defendants, and each of them, as follows:

For an emergency restraining order enjoining lender and any successor in interest from foreclosing on Petitioner's Property pending adjudication of Petitioner's claims set forth herein;

For a permanent injunction enjoining Defendants from engaging in the fraudulent, deceptive, predatory and negligent acts and practices alleged herein;

For quiet title to Property;

For rescission of the loan contract and restitution by Defendants to Petitioner according to proof at trial;

For disgorgement of all amounts wrongfully acquired by Defendants according to proof at trial;

For actual monetary damages in the amount $742,496.37;

For pain and suffering due to extreme mental anguish in an amount to be determined at trial.

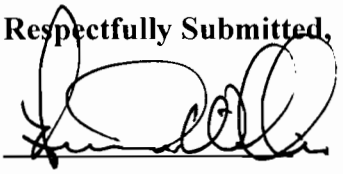
For pre-judgment and post-judgment interest according to proof at trial;

For punitive damages according to proof at trial in an amount equal to $1,827,820.98.

For attorney's fees and costs as provided by statute; and,

For such other relief as the Court deems just and proper.

Respectfully Submitted,

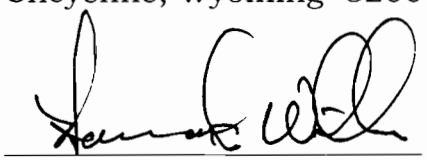


Howard Willis

Certificate of Service

I, Howard Willis, certify that on September 23, 2010, I did mail via US Postal Service first class mail postage paid a true and correct copy of the above and foregoing MOTION FOR MORE DEFINITE STATEMENT to:

John M Kuker
James M. Peterson
Romsa & Kuker LLC
2123 Pioneer Ave.
Cheyenne, Wyoming 82001



Howard Willis